

MINUTES
(Unofficial until approved)
Committee on Trial Court Operations
Ramada Hotel, Bismarck
July 18, 2014

Members Present

Judge Zane Anderson, Chair
Anita Ibach
Chris Iverson
Judge John Greenwood
Cindy Schmitz
Bev Stremick

Members Absent

Jodie Fixen
Scott Johnson

Others Present (Mental Health Commitment Forms Review)

Sharon Bitz, Cindy Lien, ND State Hospital
Sarah Erck, Deputy Clerk, Supreme Court
Haley Wamstad, Ass't State's Attorney, Grand Forks County

Chair Anderson called the meeting to order at 10:00 a.m. and drew Committee members' attention to Attachment B (July 14, 2014) - minutes of the March 7, 2014, meeting.

It was moved by Judge Greenwood, seconded by Anita Ibach, and carried that the minutes be approved.

The Committee then turned to a review of the 3rd **draft revisions** to C-Series forms: **C-2 through C-10A**. [See March 7 meeting minutes for discussion of previous revisions]

C-2 Order for Appointment of Expert Examiner and Examination

Staff briefly reviewed the revision resulting from the March 7 meeting, which consisted of inserting a blank space following "residence" on line 23 in which the county of residence could be entered.

There were no suggested modifications to the form as further revised.

C-3 Warrant of Attachment - Alternative New Form

Staff noted previous revisions to the form:

- insert beneath "Name of Respondent" lines for date of birth and last known address
- remove line 15 ("The Respondent is located at _____")
- add an option in lines 5-10 directing that the respondent be held in a secure facility until a hearing can be scheduled

Chair Anderson said an issue reserved for further discussion is whether the alternative form should replace the current warrant form or if it should serve as an additional, alternative warrant form. He requested discussion of any other changes to the revised form.

There was general agreement that the alternative form encompasses the elements contained in the current form.

With respect to the reference to "last known address", Haley Wamstad noted that quite often a precise address for the respondent is not known, or someone may have information about generally where the respondent may be located. After discussion, Committee members agreed the reference should be changed to read "last known location".

Committee members discussed language on p.2, lines 1-2, of the form which provides that the warrant is effective until expiration of the current treatment order (date to be supplied). Haley Wamstad explained that the Grand Forks Sheriff's Office prefers that the warrant contain an explicit expiration date.

Following discussion, it was agreed to add a blank line in which an expiration date could be entered, in addition to a date for expiration of the treatment order.

In response to a question from Chair Anderson, Committee members agreed the alternate warrant form should replace current C-3.

C-4 Order of Dismissal

Staff noted that there were no changes to the revisions discussed at the March 7 meeting.

There were no suggested further revisions to the form.

C-6 Notice of Hearing

Staff reviewed the draft revisions discussed at the March 7 meeting:

- retain "there is probable cause to believe that" in the preliminary hearing option
- modify the medication hearing option to add after "whether" - "the Court shall authorize treatment with prescribed medication"

Judge Greenwood suggested that "wish to object" on p. 1, line 10, should simply read "object". Committee members agreed.

There were no additional changes to the 2nd draft revisions.

C-6A - Order for Continuance for Good Cause [New Form]

Staff summarized the March 7 meeting discussion regarding the utility of a form by which a hearing could be continued for good cause. He said the Committee agreed to review a draft form based on the Stutsman County form, which could be included as new C-6A. He said it was also agreed that an option for conducting the new hearing by ITV should be included.

Committee members then reviewed the new draft form.

Judge Greenwood suggested check boxes should be added on p. 1, lines 1 and 5, but removed from line 9 (the notice provision). Committee members agreed. Also, “wish to object” on line 15 would be revised to read simply “object”.

There were no additional suggested changes.

C-8 Findings of Fact, Conclusions of Law, and Order Following Preliminary Hearing

Staff briefly reviewed the revisions discussed at the March 7 meeting:

Judge Greenwood drew attention to the draft deletion, on p. 1, lines 5-6, of the check box provision related to the respondent’s waiver of the right to be present at the hearing. He noted that the first check box provision, p. 1, lines 1-3, deals with the application for waiver of a hearing, but it may be useful to retain an option by which the respondent otherwise waives the right to be present, e.g., the respondent refuses to come to the hearing.

Following discussion, it was agreed to retain the provision regarding respondent waiver to be present, and to include check box alternatives regarding whether the respondent was present or waived the right to be present.

There were no other suggested changes.

Chair Anderson observed that the Committee had reserved for discussion the relation between the C-8 and C-9 forms and the C-11 form.

C-8A Findings of Fact, Conclusions of Law, and Order Following Preliminary Hearing (Alternative Form - Findings of Fact and Conclusions on the Record)

Staff reviewed the slight changes resulting from the March 7 meeting.

Committee members agreed the additional revisions to C-8 should be carried forward to C- 8A. There were no other changes to the draft form.

C-9 Findings of Fact, Conclusions of Law, and Order Following Treatment or Continuing Treatment Hearing

Staff reviewed revisions discussed at the March 7 meeting.

- inclusion of an introductory phrase in Section VII regarding the court having committed the respondent for treatment
- inclusion of a notice provision regarding firearms limitations imposed by federal and state law
- inclusion in Section II of the Conclusions of Law of language relating to the right to appeal within thirty days
- inclusion in the 2nd paragraph on p. 1 of alternatives indicating whether the respondent was or was not present for the hearing

There were no additional suggested changes.

C-9A Findings of Fact, Conclusions of Law, and Order Following Treatment or Continuing Treatment Hearing [Alternative Form - Findings of Fact and Conclusions on the Record]

Committee members agreed the changes incorporated in C-9 should be carried forward to C-9A.

There were no additional suggested changes.

C-9A Order Regarding Involuntary Treatment with Medication - Renumbered as **C-9B**

Committee members agreed language should be included regarding the right to counsel and the right to appeal within thirty days.

No additional changes were noted.

C-10 Order Appointing Independent Expert Examiner

Staff reviewed revisions discussed at the March 7 meeting.

No additional changes were suggested.

C-10A Order Appointing Independent Expert Examiner (Request to Treat with Prescribed Medication)

Staff reviewed the revision discussed at the March 7 meeting - including on line 7 space so the county of residence can be indicated.

No additional changes were suggested.

Committee members then reviewed 2nd revisions to forms **C-11 through C-19.**

C-11 Order for Hospitalization and Treatment

Chair Anderson noted issues reserved at the March 7 meeting for further discussion regarding the form: delete the form, revise the form, or add the form language to other forms, e.g., C-8 or C-9 or both.

Judge Greenwood observed that if C-9 is used, then C-11 generally would not be used in a proceeding.

Haley Wamstad said C-11 is used quite often in Grand Forks proceedings if there is a waiver. If there is a hearing, she said, then C-9 would be used.

Cindy Lien said the C-11 form is used quite often in commitments to the State Hospital.

Judge Greenwood said there is likely no harm in retaining the form.

Committee members agreed that if the form is to be retained the notices regarding right to counsel and the right to appeal within thirty days and the firearms limitation should be included.

Haley Wamstad asked whether the substance of C-9A could be incorporated into C-11. Otherwise, she said there will be three forms addressing similar situations.

Following discussion, Committee members agreed that form *C-11 should be retained as new form C-9B and renumbered form C-9B should be changed to C-9C.*

C-12 Order for Alternative Treatment

Staff reviewed the revisions resulting from the March 7 meeting:

- on p.1, insert “and is a person requiring treatment” on line 3, after “dependent”
- insert “or until further order of the Court” after “[date]” on line 7
- add notice provisions relating to the right to counsel and the right to appeal within thirty days and the firearms limitation

There were no additional suggested revisions.

C-13 Order for Less Restrictive Treatment

Staff reviewed the revisions discussed at the March 7 meeting:

- “the requested facility” on p. 1, line 3, should be replaced with a blank line so the facility could be identified

There were no additional changes.

C-14 Emergency Treatment Order

Staff reviewed the revision resulting from the March 7 meeting:

- probable cause language revised to reflect the statutory language related to emergency situations [N.D.C.C. 25-03.1-25(1)] – respondent is a person requiring treatment and “there exists a serious risk of harm to self, other persons, or property”

Chair Anderson noted that Committee members deferred further discussion of the form to this meeting so that the applicable statute could be reviewed.

Judge Greenwood suggested that alternatives in C-3 related to where the respondent can be detained could be incorporated in C-14. He said the shaded language related to existence of an actual emergency should be retained.

With respect to the “serious risk of harm” language on p. 1, line 3, Haley Wamstad asked whether the harm must be of an immediate nature for purposes of the emergency treatment order. Committee members agreed the reference should be included.

Following further discussion, Committee members agreed revisions should be drafted to generally incorporate the alternatives in C-3 and to reflect relevant statutory requirements.

C-14A Order for Transport

Staff reviewed the revisions resulting from the March 7 meeting:

- include a provision indicating the must return the respondent to the identified location after the hearing
- include a blank line in the cost provision so the county can be identified

With respect to the draft return provision, Judge Anderson wondered whether the return of the respondent depends on the nature of the hearing result. He said the form may be cleaner if the provision were deleted as there may be situations in which it would not apply.

Judge Greenwood suggested, as an alternative, adding “unless otherwise ordered” after the return provision on line 7. Committee members agreed with the suggested addition.

There were no other suggested changes.

C-16 Transfer Order

Chair Anderson noted the Committee’s earlier decision to retain the form.

There were no suggested changes.

C-18 Hospitalization Order Following Alternative Treatment Order

Staff noted the only additional revision following discussion at the March 7 meeting was to insert “dated _____” on line 3 after “Order _____”).

Committee members agreed a paragraph should be added indicating that the court’s previous finding regarding federal firearms limitations remains in effect. It was also agreed to add the notice provision regarding the right to counsel and the right to appeal within thirty days.

C-19 Detention Order Pending Hearing

Staff noted that the initial conclusion at the December 13 meeting was that the form should be deleted since C-14 may be sufficient for use.

Haley Wamstad asked whether was any substantive difference between C-19 and C-14. Following discussion, Committee members agreed C-19 is redundant and could be deleted.

General

With respect to the C-Series forms generally, Chris Iverson asked whether the case number should be included under the signature block on the forms. That would link the signature page to the relevant case if all that was shown on the last page was the signature block. Committee members agreed options should be considered regarding including case number information.

Chair Anderson noted that the C-Series forms had now been reviewed several times and revised. Committee members agreed the C-Series forms, with the additional revisions and with the exception of C-14, should be approved absent any particular issues that may arise.

Chair Anderson said the C-14 form, with further draft revisions, would be reviewed at the next meeting.

GN-SERIES

The Committee next reviewed 1st revisions to selected GN-Series forms.

GN-1 - Petition for Involuntary Commitment

Staff noted revisions resulting from the March 7 meeting discussion: the addition of social security number and gender as information to be included in the petition. The additional information is necessary for purposes of reporting related to the federal firearms limitation.

Haley Wamstad asked whether reporting can be accomplished without social security number information. Additionally, she expressed concern that including the information in the form may be problematic since the petition tends to circulate fairly widely. She suggested the possible use of a separate confidential information sheet. She noted that Grand Forks County has a separate form that each petitioner

must complete if confidential information would otherwise be included in the form. She will provide the form for review.

Committee members agreed that apart from possible use of a confidential information sheet, the form was acceptable.

GN-4 - Application and Order for Waiver of Hearing

Staff reviewed the revisions resulting from the March 7 meeting discussion: 1) inclusion of paragraph 6, which addresses the Respondent's understanding of the right to a hearing to contest disclosure of treatment records and allows the Respondent to waive the hearing, and 2) deletion of the Order portion on p. 2 of the form.

With respect generally to the GN-4 waiver form, Judge Greenwood suggested an identical form could be included in the C-Series forms. He said often the waiver will apply to a continuing treatment hearing and the clerk of court would not have the GN form if, for example, the respondent is at the State Hospital. If the respondent is not at the State Hospital, he said, a C-Series version of GN-4 would then be available to the clerk.

Chris Iverson said one option would be to make the GN-4 form available in Odyssey. Judge Greenwood agreed that would be a workable solution.

With respect generally to draft paragraph 6, which originated in a Stutsman county form, Judge Greenwood said sometimes during a hearing the issue arises if the respondent has not signed a waiver, which then prevents testimony regarding contents of treatment records. Paragraph 6 would then provide the respondent's waiver to contest disclosure. However, he said it may be that the provision was included in the Stutsman form so there would be no need to revisit the issue.

Haley Wamstad wondered whether one purpose might be, for example, if the respondent agrees to go to chemical dependency treatment, the waiver would enable the treatment provider to inform the court if the respondent is not complying.

With respect to the reasons for the general waiver of hearing in paragraph 5, Haley Wamstad said it is often the case that the respondent agrees to comply with the recommended treatment. She suggested that paragraph 5 could be revised to indicate that the respondent agrees with the indicated treatment. Committee members tentatively agreed with the suggested change.

Cindy Lien drew attention the kinds of hearings listed under paragraph 4 and noted that modification and medication hearings were added to C-6 (Notice of Hearing). She suggested these hearing types should be added to paragraph 4. Committee members agreed.

With respect to draft paragraph 6, after further discussion Committee members agreed the paragraph should be deleted.

There were no additional suggested revisions.

GN-2 - Affidavit in Support of Petition

There were no suggested revisions.

GN-3 - Notice of Procedures and Rights

The following initial revisions were noted:

- Paragraph 4: 1) change “14 days later” to “within 14 days” and reposition to the end of the affected sentence; 2) change “period of 90 days” to “period up to 90 days”; 3) change “after the 90 days has expired” to “beyond the 90 days”
- Paragraph 5: in subparagraph (a) refer simply to “a hearing” and make related changes in succeeding subparagraphs
- Paragraph 6: revise to reflect contact with the respondent’s attorney or the attorney appointed for the respondent, if any

GN-5 - Application for Emergency Admission

Staff noted that comments had been received suggesting the form is inaccurate in relating to an emergency admission. He said the relevant statute [N.D.C.C. §25-03.1-25(5)] refers only to evaluation. However, he said N.D.C.C §25-03.1-26(1) includes reference to the respondent being “admitted”. He said a suggestion was to change the form to relate to an application for *evaluation*.

Following discussion, it was agreed to revise the form to refer to “Application for Evaluation and Admission”.

Staff noted a necessary revision in the last paragraph of the form to reflect the statutory language regarding reasonable cause to believe there exists serious risk of harm of an immediate nature (rather than the current reference to serious bodily injury).

Staff said a comment had also been received regarding the reference to “time” in the requested description of circumstances under which the respondent was taken into custody. He said there is concern that “time” is being interpreted differently in different areas and by different service providers. For example, he said, the “time” reference is considered to trigger the timeframe within which an evaluation must be completed and some interpret “time” as referring to when the respondent is initially brought to a facility pending transport for an evaluation, while others interpret “time” as being when the respondent is actually delivered to the facility that will conduct the evaluation. He said there are references to “time” in other forms as well, e.g. GN-7 (time of admission).

Judge Greenwood said “time of admission” would trigger the facility responsibility to conduct the evaluation. However, he said, the facility would not likely know when the respondent had been taken to another facility pending transport.

Haley Wamstad observed that the time requirement starts at the point the respondent is being held involuntarily.

The issue will be reserved for further discussion.

There being no further business, the meeting was adjourned at 1:55 p.m.

Jim Ganje, Staff